

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia, relating to the
2 Virginia Freedom of Information Act; general exclusion for trade secrets submitted to a public
3 body.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3705.6 and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:**

6 **§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

7 The following information contained in a public record is excluded from the mandatory
8 disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except
9 where such disclosure is prohibited by law. Redaction of information excluded under this section from a
10 public record shall be conducted in accordance with § 2.2-3704.01.

11 1. Information furnished to a public body by a submitting entity that qualifies as a trade secret of
12 the submitting entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.). In order for such
13 trade secret information to be excluded from the provisions of this chapter, the submitting entity shall
14 make a written request to the public body (i) invoking such exclusion upon submission of the trade
15 secret information for which protection from disclosure is sought; (ii) identifying with specificity the
16 trade secret information for which protection is sought; and (iii) stating the reasons why protection is
17 necessary. The public body may determine whether the requested exclusion from disclosure is necessary
18 to protect the trade secrets of the submitting entity under this subdivision.

19 If a public body withholds such information pursuant to this subdivision and the requester brings
20 an action under this chapter to challenge such withholding, the requester shall name the submitting
21 entity or its successor in interest as an additional defendant in the action. If, as a result of the action, the
22 court requires the public body to produce such information because it was improperly designated as a
23 trade secret, any award of reasonable costs and attorney fees to the requester pursuant to § 2.2-3713
24 shall be paid by the submitting entity or the public body, or both, in the proportion deemed appropriate
25 by the court.

26 The provisions of this subdivision shall not be construed to authorize the withholding of such
27 information that no longer meets the definition of a trade secret under the Uniform Trade Secrets Act.

28 1a. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-
29 132.4 or 62.1-134.1.

30 2. Financial statements not publicly available filed with applications for industrial development
31 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

32 3. Proprietary information, voluntarily provided by private business pursuant to a promise of
33 confidentiality from a public body, used by the public body for business, trade, and tourism development
34 or retention; and memoranda, working papers, or other information related to businesses that are
35 considering locating or expanding in Virginia, prepared by a public body, where competition or
36 bargaining is involved and where disclosure of such information would adversely affect the financial
37 interest of the public body.

38 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-
39 239 et seq.), as such Act existed prior to July 1, 1992.

40 5. Fisheries data that would permit identification of any person or vessel, except when required
41 by court order as specified in § 28.2-204.

42 6. Confidential financial statements, balance sheets, ~~trade secrets~~, and revenue and cost
43 projections provided to the Department of Rail and Public Transportation, provided such information is
44 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other
45 laws administered by the Surface Transportation Board or the Federal Railroad Administration with
46 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad
47 Administration.

48 7. Proprietary information related to inventory and sales, voluntarily provided by private energy
49 suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
50 contingency planning purposes or for developing consolidated statistical information on energy supplies.

51 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or
52 the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
53 Chapter 10 of Title 32.1.

54 9. Proprietary, commercial, or financial information, balance sheets, ~~trade secrets~~, and revenue
55 and cost projections provided by a private transportation business to the Virginia Department of
56 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
57 transportation studies needed to obtain grants or other financial assistance under the Transportation
58 Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such
59 information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce
60 Act or other laws administered by the Surface Transportation Board or the Federal Railroad
61 Administration with respect to data provided in confidence to the Surface Transportation Board and the
62 Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to
63 any wholly owned subsidiary of a public body.

64 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade
65 secrets or proprietary information by any person in connection with a procurement transaction or by any
66 person who has submitted to a public body an application for prequalification to bid on public
67 construction projects in accordance with subsection B of § 2.2-4317.

68 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public
69 entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of
70 proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-
71 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such
72 information was made public prior to or after the execution of an interim or a comprehensive agreement,
73 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
74 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
75 documented in writing by the responsible public entity; and

76 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
77 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§

78 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
79 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in
80 the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity,
81 including balance sheets and financial statements, that are not generally available to the public through
82 regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if
83 such information was made public prior to the execution of an interim agreement or a comprehensive
84 agreement, the financial interest or bargaining position of the public or private entity would be adversely
85 affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the
86 provisions of this chapter, the private entity shall make a written request to the responsible public entity:

- 87 (1) Invoking such exclusion upon submission of the data or other materials for which protection
88 from disclosure is sought;
- 89 (2) Identifying with specificity the data or other materials for which protection is sought; and
- 90 (3) Stating the reasons why protection is necessary.

91 The responsible public entity shall determine whether the requested exclusion from disclosure is
92 necessary to protect the trade secrets [under this subdivision](#) or financial information of the private entity.
93 To protect other information submitted by the private entity from disclosure, the responsible public
94 entity shall determine whether public disclosure prior to the execution of an interim agreement or a
95 comprehensive agreement would adversely affect the financial interest or bargaining position of the
96 public or private entity. The responsible public entity shall make a written determination of the nature
97 and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a
98 written determination is made by the responsible public entity, the information afforded protection under
99 this subdivision shall continue to be protected from disclosure when in the possession of any affected
100 jurisdiction or affected local jurisdiction.

101 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed
102 to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
103 information concerning the terms and conditions of any interim or comprehensive agreement, service
104 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity

105 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
106 that involves the use of any public funds; or (d) information concerning the performance of any private
107 entity developing or operating a qualifying transportation facility or a qualifying project.

108 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local
109 jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying
110 transportation facility," "responsible public entity," and "private entity" shall mean the same as those
111 terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-
112 Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

113 12. Confidential proprietary information ~~or trade secrets~~, not publicly available, provided by a
114 private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or
115 to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia
116 Resources Authority where, if such information were made public, the financial interest of the private
117 person or entity would be adversely affected.

118 13. ~~Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or~~
119 ~~confidential~~ Confidential proprietary information that is not generally available to the public through
120 regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee
121 under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a
122 promise of confidentiality from the franchising authority, to the extent the information relates to the
123 bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new
124 technologies or implementation of improvements, where such new services, technologies, or
125 improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise
126 area, and where, if such information were made public, the competitive advantage or financial interests
127 of the franchisee would be adversely affected.

128 In order for ~~trade secrets or~~ confidential proprietary information to be excluded from the
129 provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon
130 submission of the data or other materials for which protection from disclosure is sought, (b) identify the

131 data or other materials for which protection is sought, and (c) state the reason why protection is
132 necessary.

133 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
134 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
135 applicable franchising authority serves on the management board or as an officer of the bidder,
136 applicant, or franchisee.

137 14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to
138 the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

139 15. Information related to Virginia apple producer sales provided to the Virginia State Apple
140 Board pursuant to § 3.2-1215.

141 ~~16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,~~
142 ~~submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery~~
143 ~~Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.~~

144 17. Information relating to a grant or loan application, or accompanying a grant or loan
145 application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-
146 2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to
147 Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal
148 proprietary business or research-related information produced or collected by the applicant in the
149 conduct of or as a result of study or research on medical, rehabilitative, scientific, technical,
150 technological, or scholarly issues, when such information has not been publicly released, published,
151 copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

152 18. Confidential proprietary information and trade secrets developed and held by a local public
153 body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable
154 television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if
155 disclosure of such information would be harmful to the competitive position of the locality.

156 In order for confidential proprietary information or trade secrets to be excluded from the
157 provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b)

158 identify with specificity the information for which protection is sought, and (c) state the reasons why
159 protection is necessary. However, the exemption provided by this subdivision shall not apply to any
160 authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

161 19. Confidential proprietary information and trade secrets developed by or for a local authority
162 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
163 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
164 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
165 position of the authority, except that information required to be maintained in accordance with § 15.2-
166 2160 shall be released.

167 20. ~~Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial~~
168 Financial information of a business, including balance sheets and financial statements, that are not
169 generally available to the public through regulatory disclosure or otherwise, provided to the Department
170 of Small Business and Supplier Diversity as part of an application for certification as a small, women-
171 owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for
172 such ~~trade secrets or~~ financial information to be excluded from the provisions of this chapter, the
173 business shall (i) invoke such exclusion upon submission of the data or other materials for which
174 protection from disclosure is sought, (ii) identify the data or other materials for which protection is
175 sought, and (iii) state the reasons why protection is necessary.

176 21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health
177 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

178 22. ~~Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,~~
179 ~~but not limited to, financial~~ Financial information, including balance sheets and financial statements,
180 that are not generally available to the public through regulatory disclosure or otherwise, and revenue and
181 cost projections supplied by a private or nongovernmental entity to the State Inspector General for the
182 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
183 General in accordance with law.

184 In order for the information specified in this subdivision to be excluded from the provisions of
185 this chapter, the private or nongovernmental entity shall make a written request to the State Inspector
186 General:

- 187 a. Invoking such exclusion upon submission of the data or other materials for which protection
188 from disclosure is sought;
- 189 b. Identifying with specificity the data or other materials for which protection is sought; and
- 190 c. Stating the reasons why protection is necessary.

191 The State Inspector General shall determine whether the requested exclusion from disclosure is
192 necessary to protect the ~~trade secrets or~~ financial information of the private entity. The State Inspector
193 General shall make a written determination of the nature and scope of the protection to be afforded by it
194 under this subdivision.

195 23. Information relating to a grant application, or accompanying a grant application, submitted to
196 the Tobacco Region Revitalization Commission that would (i) reveal (a) ~~trade secrets as defined in the~~
197 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b)~~ financial information of a grant applicant that is not
198 a public body, including balance sheets and financial statements, that are not generally available to the
199 public through regulatory disclosure or otherwise; or ~~(e)~~ (b) research-related information produced or
200 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
201 scientific, technical, technological, or scholarly issues, when such information has not been publicly
202 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the
203 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
204 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
205 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
206 duties of the Commission pursuant to § 3.2-3103.

207 In order for the information specified in this subdivision to be excluded from the provisions of
208 this chapter, the applicant shall make a written request to the Commission:

- 209 a. Invoking such exclusion upon submission of the data or other materials for which protection
210 from disclosure is sought;

211 b. Identifying with specificity the data, information or other materials for which protection is
212 sought; and

213 c. Stating the reasons why protection is necessary.

214 The Commission shall determine whether the requested exclusion from disclosure is necessary to
215 protect the ~~trade secrets~~, financial information, or research-related information of the applicant. The
216 Commission shall make a written determination of the nature and scope of the protection to be afforded
217 by it under this subdivision.

218 24. a. Information held by the Commercial Space Flight Authority relating to rate structures or
219 charges for the use of projects of, the sale of products of, or services rendered by the Authority if
220 disclosure of such information would adversely affect the financial interest or bargaining position of the
221 Authority or a private entity providing the information to the Authority; or

222 b. Information provided by a private entity to the Commercial Space Flight Authority if
223 disclosure of such information would (i) reveal (a) ~~trade secrets of the private entity as defined in the~~
224 ~~Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b)~~ financial information of the private entity, including
225 balance sheets and financial statements, that are not generally available to the public through regulatory
226 disclosure or otherwise; or ~~(e)~~ (b) other information submitted by the private entity and (ii) adversely
227 affect the financial interest or bargaining position of the Authority or private entity.

228 In order for the information specified in clauses (a); and (b); ~~and (e)~~ of subdivision ~~24~~ b to be
229 excluded from the provisions of this chapter, the private entity shall make a written request to the
230 Authority:

231 (1) Invoking such exclusion upon submission of the data or other materials for which protection
232 from disclosure is sought;

233 (2) Identifying with specificity the data or other materials for which protection is sought; and

234 (3) Stating the reasons why protection is necessary.

235 The Authority shall determine whether the requested exclusion from disclosure is necessary to
236 protect the ~~trade secrets or~~ financial information of the private entity. To protect other information
237 submitted by the private entity from disclosure, the Authority shall determine whether public disclosure

238 would adversely affect the financial interest or bargaining position of the Authority or private entity. The
239 Authority shall make a written determination of the nature and scope of the protection to be afforded by
240 it under this subdivision.

241 25. Information of a proprietary nature furnished by an agricultural landowner or operator to the
242 Department of Conservation and Recreation, the Department of Environmental Quality, the Department
243 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
244 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
245 of a state or federal regulatory enforcement action.

246 ~~26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to~~
247 ~~the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such~~
248 ~~trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this~~
249 ~~exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)~~
250 ~~identify the data or materials for which protection is sought, and (iii) state the reasons why protection is~~
251 ~~necessary.~~

252 27. Information of a proprietary nature furnished by a licensed public-use airport to the
253 Department of Aviation for funding from programs administered by the Department of Aviation or the
254 Virginia Aviation Board, where if such information was made public, the financial interest of the public-
255 use airport would be adversely affected.

256 In order for the information specified in this subdivision to be excluded from the provisions of
257 this chapter, the public-use airport shall make a written request to the Department of Aviation:

258 a. Invoking such exclusion upon submission of the data or other materials for which protection
259 from disclosure is sought;

260 b. Identifying with specificity the data or other materials for which protection is sought; and

261 c. Stating the reasons why protection is necessary.

262 28. Records submitted as a grant or loan application, or accompanying a grant or loan
263 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-
264 3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or

265 research-related information produced or collected by the applicant in the conduct of or as a result of
266 study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when
267 such information has not been publicly released, published, copyrighted, or patented, if the disclosure of
268 such information would be harmful to the competitive position of the applicant.

269 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

270 A. Public bodies may hold closed meetings only for the following purposes:

271 1. Discussion, consideration, or interviews of prospective candidates for employment;
272 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
273 specific public officers, appointees, or employees of any public body; and evaluation of performance of
274 departments or schools of public institutions of higher education where such evaluation will necessarily
275 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
276 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
277 that involves the teacher and some student and the student involved in the matter is present, provided the
278 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
279 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
280 or an elected school board to discuss compensation matters that affect the membership of such body or
281 board collectively.

282 2. Discussion or consideration of admission or disciplinary matters or any other matters that
283 would involve the disclosure of information contained in a scholastic record concerning any student of
284 any Virginia public institution of higher education or any state school system. However, any such
285 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
286 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
287 such student, parents, or guardians so request in writing and such request is submitted to the presiding
288 officer of the appropriate board.

289 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
290 disposition of publicly held real property, where discussion in an open meeting would adversely affect
291 the bargaining position or negotiating strategy of the public body.

- 292 4. The protection of the privacy of individuals in personal matters not related to public business.
- 293 5. Discussion concerning a prospective business or industry or the expansion of an existing
294 business or industry where no previous announcement has been made of the business' or industry's
295 interest in locating or expanding its facilities in the community.
- 296 6. Discussion or consideration of the investment of public funds where competition or bargaining
297 is involved, where, if made public initially, the financial interest of the governmental unit would be
298 adversely affected.
- 299 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
300 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
301 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
302 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
303 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
304 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
305 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
306 the closure of a meeting merely because an attorney representing the public body is in attendance or is
307 consulted on a matter.
- 308 8. In the case of boards of visitors of public institutions of higher education, discussion or
309 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
310 for services or work to be performed by such institution. However, the terms and conditions of any such
311 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
312 person and accepted by a public institution of higher education in Virginia shall be subject to public
313 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
314 (i) "foreign government" means any government other than the United States government or the
315 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
316 created under the laws of the United States or of any state thereof if a majority of the ownership of the
317 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
318 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal

319 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
320 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

321 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
322 Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of
323 Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

324 10. Discussion or consideration of honorary degrees or special awards.

325 11. Discussion or consideration of tests, examinations, or other information excluded from this
326 chapter pursuant to subdivision 4 of § 2.2-3705.1.

327 12. Discussion, consideration, or review by the appropriate House or Senate committees of
328 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
329 statement filed by the member, provided the member may request in writing that the committee meeting
330 not be conducted in a closed meeting.

331 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
332 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
333 governing body in open meeting finds that an open meeting will have an adverse effect upon the
334 negotiating position of the governing body or the establishment of the terms, conditions and provisions
335 of the siting agreement, or both. All discussions with the applicant or its representatives may be
336 conducted in a closed meeting.

337 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
338 economic activity and estimating general and nongeneral fund revenues.

339 15. Discussion or consideration of medical and mental health records excluded from this chapter
340 pursuant to subdivision 1 of § 2.2-3705.5.

341 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant
342 to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent;
343 and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
344 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
345 and subdivision 11 of § 2.2-3705.7.

346 17. Those portions of meetings by local government crime commissions where the identity of, or
347 information tending to identify, individuals providing information about crimes or criminal activities
348 under a promise of anonymity is discussed or disclosed.

349 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
350 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
351 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
352 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
353 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

354 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
355 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
356 enforcement or emergency service officials concerning actions taken to respond to such matters or a
357 related threat to public safety; discussion of information excluded from this chapter pursuant to
358 subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of
359 any person or the security of any facility, building, structure, information technology system, or software
360 program; or discussion of reports or plans related to the security of any governmental facility, building
361 or structure, or the safety of persons using such facility, building or structure.

362 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
363 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
364 the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College
365 Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a
366 security or other ownership interest in an entity, where such security or ownership interest is not traded
367 on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
368 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
369 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
370 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
371 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
372 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and

373 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
374 shall be construed to prevent the disclosure of information relating to the identity of any investment
375 held, the amount invested or the present value of such investment.

376 21. Those portions of meetings in which individual child death cases are discussed by the State
377 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
378 individual child death cases are discussed by a regional or local child fatality review team established
379 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
380 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
381 which individual adult death cases are discussed by the state Adult Fatality Review Team established
382 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
383 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

384 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
385 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
386 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
387 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
388 proprietary, business-related information pertaining to the operations of the University of Virginia
389 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
390 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
391 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
392 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
393 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
394 Medical School, as the case may be.

395 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
396 or consideration of any of the following: the acquisition or disposition of real or personal property where
397 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
398 operational plans that could affect the value of such property, real or personal, owned or desirable for
399 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and

400 contracts for services or work to be performed by the Authority; marketing or operational strategies
401 where disclosure of such strategies would adversely affect the competitive position of the Authority;
402 members of its medical and teaching staffs and qualifications for appointments thereto; and
403 qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing
404 discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

405 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
406 within the Department of Health Professions to the extent such discussions identify any practitioner who
407 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

408 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
409 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
410 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
411 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
412 23.1 is discussed.

413 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
414 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
415 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
416 wireless E-911 service.

417 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
418 Professional and Occupational Regulation, Department of Health Professions, or the Board of
419 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
420 a decision or meetings of health regulatory boards or conference committees of such boards to consider
421 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
422 as requested by either of the parties.

423 28. Discussion or consideration of information excluded from this chapter pursuant to
424 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as
425 those terms are defined in § 33.2-1800, or any independent review panel appointed to review
426 information and advise the responsible public entity concerning such records.

427 29. Discussion of the award of a public contract involving the expenditure of public funds,
428 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
429 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
430 the public body.

431 30. Discussion or consideration of grant or loan application information excluded from this
432 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or
433 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
434 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
435 Authority.

436 31. Discussion or consideration by the Commitment Review Committee of information excluded
437 from this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to
438 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

439 32. [Expired.]

440 33. Discussion or consideration of confidential proprietary information and trade secrets
441 excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption
442 provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act
443 (§ 15.2-7200 et seq.).

444 34. Discussion or consideration by a local authority created in accordance with the Virginia
445 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and
446 trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

447 35. Discussion or consideration by the State Board of Elections or local electoral boards of
448 voting security matters made confidential pursuant to § 24.2-625.1.

449 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
450 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
451 excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

452 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
453 Awards Committee of information or confidential matters excluded from this chapter pursuant to

454 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual
455 maximum scholarship award, review and consider scholarship applications and requests for scholarship
456 award renewal, and cancel, rescind, or recover scholarship awards.

457 38. Discussion or consideration by the Virginia Port Authority of information excluded from this
458 chapter pursuant to subdivision 1 of § 2.2-3705.6.

459 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
460 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
461 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
462 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
463 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this
464 chapter pursuant to subdivision 25 of § 2.2-3705.7.

465 40. Discussion or consideration of information excluded from this chapter pursuant to
466 subdivision 3 of § 2.2-3705.6.

467 41. Discussion or consideration by the Board of Education of information relating to the denial,
468 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of §
469 2.2-3705.3.

470 42. Those portions of meetings of the Virginia Military Advisory Council or any commission
471 created by executive order for the purpose of studying and making recommendations regarding
472 preventing closure or realignment of federal military and national security installations and facilities
473 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
474 organization appointed by a local governing body, during which there is discussion of information
475 excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.

476 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
477 information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

478 44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of
479 information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

480 45. Discussion or consideration by the board of directors of the Commercial Space Flight
481 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

482 46. Discussion or consideration of personal and proprietary information that are excluded from
483 the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §
484 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain
485 information that has been certified for release by the person who is the subject of the information or
486 transformed into a statistical or aggregate form that does not allow identification of the person who
487 supplied, or is the subject of, the information.

488 47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia
489 Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision
490 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

491 48. Discussion or consideration of grant or loan application records excluded from this chapter
492 pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from
493 the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title
494 23.1.

495 49. Discussion or development of grant proposals by a regional council established pursuant to
496 Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
497 and Opportunity Board.

498 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
499 closed meeting shall become effective unless the public body, following the meeting, reconvenes in
500 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
501 regulation, or motion that shall have its substance reasonably identified in the open meeting.

502 C. Public officers improperly selected due to the failure of the public body to comply with the
503 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
504 they obtain notice of the legal defect in their election.

505 D. Nothing in this section shall be construed to prevent the holding of conferences between two
506 or more public bodies, or their representatives, but these conferences shall be subject to the same
507 procedures for holding closed meetings as are applicable to any other public body.

508 E. This section shall not be construed to (i) require the disclosure of any contract between the
509 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
510 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
511 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
512 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
513 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
514 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
515 bonds.

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